

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SWEETHEART CUP COMPANY, INC.,
dba FONDA BRANDS¹

Employer

and

Case 21-RC-20639

UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL 135, affiliated with the UNITED
FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act (herein called Act), the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ In its post-hearing brief, the Employer moves to reopen the record to permit additional testimony of Plant Manager Joe Lampich, claiming that the hearing officer erred in sustaining an objection to a question posed concerning the supervisory authority of Dean Richetti. The Employer's motion is denied and the hearing officer's ruling is upheld. As noted below, the record is complete and permits resolution of Richetti's supervisory status without additional testimony.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and seeks to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production (including adjustors, bag machine operators, packers, production clerk/plant clerical) and maintenance employees, material handlers, warehouse employees, shipping and receiving employees, shipping clerks and truck drivers employed by the Employer at its facilities located at 1160 Vernon Way, El Cajon, California and at 1250 Marshall Avenue, El Cajon, California; but excluding all other employees, office clerical employees, shift supervisors, confidential employees, professional employees, and supervisors as defined in the Act.⁴

ISSUES AND CONCLUSIONS

The Employer raises two contentions: (1) that Lead Bag Adjustor Dean Richetti is a supervisor within the meaning of the Act and should therefore be excluded from any unit found appropriate; and (2) that the production clerk/plant clerical, the payroll and safety office clerical, the customer service representative and the receptionist, share a community of interest with the unit, requiring their inclusion in the bargaining unit. The Petitioner contends that Richetti is not a supervisor and that he should be included in the unit. The Petitioner also maintains that the payroll and safety office clerical, the customer service representative and the

⁴ The unit accords with the stipulation of the parties.

receptionist, are office clerical employees who should be excluded from the unit; and that the plant clerical should be excluded because she lacks a community of interests with the unit.

For reasons noted below, I find that Lead Bag Adjustor Dean Richetti is not a supervisor within the meaning of the Act and that he should be included in the unit. Contrary to the Employer's contention, I find that the payroll and safety office clerical, the customer service representative and the receptionist are office clerical employees who do not share a sufficient community of interest with the unit employees and that they should be excluded from the unit. Finally, I find that Production Clerk Gilla Gutierrez shares a sufficient community of interest with the unit employees to require her inclusion in the unit.

SUPERVISORY STATUS ISSUE

A. Board Standards

Section 2(11) of the Act defines the term "supervisor" as::

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well established that an individual need possess only one of the enumerated indicia in order to be encompassed by the definition, as long as the exercise of such authority is carried out in the interest of the employer and requires the exercise of independent judgment.

Big Rivers Electric Corp., 266 NLRB 380, 382 (1993). Absent detailed evidence of independent judgment, mere inferences or conclusionary statements, without supporting evidence, are insufficient to establish supervisory status. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Sears Roebuck & Co.*, 304 NLRB 193 (1991). The Board takes care not to construe supervisory

status too broadly, because the employee who is deemed a supervisor loses the protection of the Act. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997). The burden of establishing supervisory status is upon the party asserting that status. *Kentucky River Community Care, Inc.*, 532 U.S. 706, 710 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999); *Alois Box Co., Inc.*, 326 NLRB 1177 (1998). Whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established. *Phelps Medical Center*, 295 NLRB 486, 490-91 (1989).

When there is no evidence presented that an individual possesses any one of the several primary indicia of statutory supervisory status enumerated in Section 2(11) of the Act, secondary indicia are insufficient by themselves to establish supervisory status. *Ken-Crest Services*, 335 NLRB No. 63 (2001).

The Employer contends that Richetti is a supervisor because: (1) he has the "power to responsibly direct other employees"; (2) he has the "power to recommend necessary discipline, including termination"; and (3) he has the "power to recommend employees for hiring and promotion purposes."

B. The Employer's Operation

The Employer is engaged in the business of manufacturing disposable tableware such as paper plates and bags. The facilities at issue are located in El Cajon, California, with offices and a production facility located at 1160 Vernon Way (herein called the Vernon Way facility) and a warehouse facility located at 1250 Marshall Avenue (herein called the Marchall Avenue facility), which is approximately 350 – 400 yards away from the production facility.

The Vernon Way facility is a one-story building containing 100,000 square feet of

manufacturing area, with five offices located in the front and four within the production area.⁵

All of the equipment needed to produce the Employer's products is laid out in a row running down the center of the facility and is connected via a conveyor system which takes all of the finished products away from the production line. On the right side of the building is the roll stock, staging and warehousing area, while the left side contains the corrugated storage and finished goods staging area. There are 28 machines that make various size paper plates and two bag-making machines. There are also two inside break rooms, one in the front of the facility and the other in the back, as well as three outside areas containing picnic tables which can be used by all of the production employees.

Plant Manager Joe Lampich is in charge of the two facilities in El Cajon. The following employees report directly to him: the plant engineer, the shipping supervisor, the quality control manager, the plant superintendent, the scheduler, the human resources manager, and the purchasing manager. The three shift supervisors and Lead Bag Adjustor Dean Richetti, report to the Plant Superintendent Bill Blankenship. The day shift operates from 6:00 a.m. to 2:00 p.m. and is supervised by Shift Supervisor Juan Franco. The next shift operates from 2:00 p.m. to 10:00 p.m. and is supervised by Shift Supervisor Bob Anderson. The graveyard shift operates from 10:00 p.m. to 6:00 a.m. and is supervised by Shift Supervisor Charles Roman.⁶ Production Clerk Gilla Gutierrez, is supervised by the scheduler, Sue Porath, while the human resources manager, Chris Fellows, supervises Debbie Baudaur (Payroll and Safety Office Clerical) and Candy Soloranzo (Receptionist). Meanwhile, Customer Service Representative,

⁵ The offices in the front are about 50 feet from the plant floor are occupied by Plant Manager, Lampich, Chris Fellows (human resources manager), and Debbie Baudaur. The other two offices located at the front of the facility are unoccupied. The offices within the production area are occupied by Sue Porath (scheduler), Gilla Gutierrez (production clerk), Bill Blankenship (plant superintendent) and all three shift supervisors share the last one.

⁶ Although they run three shifts for the plate production department, they usually only run the first shift in the bag production department.

Becky Clark, reports to a supervisor in Vermont.

C. Employer's Contentions

(1) "Power" to responsibly direct other employees.

The Employer contends that Richetti responsibly directs employees on the bag operation machinery. In this regard, the Employer avers that Richetti is responsible for appointing employees to the various positions on the machinery, and "directing" their lunch and break periods.

About 3 years ago, Richetti was promoted from machine adjustor to lead bag adjustor.⁷ The record reveals that all employees who work on the bag operation machinery are long-term employees who have been employed by the Employer for many years, and all were in their respective positions at the time that Richetti was promoted. Moreover, the record discloses that the Employer's operation is highly automated, and that there are distinct jobs to be performed by each of the three employees who work along side of Richetti on the bag operation machinery.

Richetti testified that he does not assign the work in the bag line department but rather that the work assignment is based on the orders made for goods and the work assignments set by the plant scheduler, Porath. Richetti further testified that although the three bag line employees are interchangeable between the bag operator position and the packer position, they tend to have set positions unless they decide amongst themselves that they want to trade positions for that particular day.⁸ The record reveals that the scheduler determines if overtime and a second shift is needed for that particular day and it is based on the production needs.

⁷ Normally the Employer only runs one shift unless demand dictates that they run a second shift. Felipe is in charge of the second shift. The employees who work on this second shift are employees who normally work on the plate machines.

⁸ There are only two bag machines at the Vernon Way facility. Lydia and Yolanda are machine operators and thus

Furthermore, the record discloses that the employees in the bag department generally take breaks and lunch at set times: usually Lydia is first, followed by Yolanda and then Edgar⁹, and not determined by Richetti. According to Richetti, if the employees ever wanted to take longer lunch breaks, they would have to go speak with Franco or Blankenship. Furthermore, sick leave and vacation are handled by the plant superintendent.

Having carefully considered the record at hand, I conclude that Richetti does not direct employees as defined by the Act. After his promotion to Lead Bag Adjustor, his duties remained the same. Richetti was only put in charge of training employees in his department, making sure the product was up to company standards, keeping the machines running at optimal levels and changing the rolls when they are out. Richetti is not responsible in directing the employees since the work assignments are pre-determined by the scheduler and are based on the orders made for that particular day. In addition, the employees in the bag line department already have set positions so there is no need for Richetti to inform them of whether they will be machine operators or packers.

As to the Employer's contention that Richetti directs the lunch and mid-day shifts for the employees in his department, the record shows that the shifts are already set. The three bag line employees take their breaks and lunch at the same scheduled time every day, unless there is some machine malfunction or any other rare occasion altering their schedules. However, this seldom occurs.

With regard to the Employer's claim that Richetti used independent judgment to direct employees within his department by assigning them to various bag operation positions,

run their own machine while Edgar is a packer. The machine operators catch the bags and put them into poly bags, and the packer then stacks the finished packages of bags into corrugated cases.

⁹ The bag line employees take two 15-minute breaks and a 30-minute lunch a day. Lydia usually takes her first break between 7:15a.m. and 7:30a.m and her lunch break at 9:30a.m. Yolanda normally follows from 7:30a.m.

and scheduling their mid-shift breaks and lunch,¹⁰ the record reveals that the plant scheduler sets the work assignments for the day according to demand,¹¹ and the mid-shift breaks and lunch are pre-determined.

Richetti's duties did not change after his promotion¹². His duties only included maintaining and adjusting the machines, setting up the poly, bringing down the rolls as needed and training the employees. All these duties are routine in nature and fail to establish that Richetti has the authority to responsibly direct other employees. Accordingly, the Employer has failed to sustain its burden in this regard.

(2) The "power" to recommend necessary discipline

The Employer next contends that Richetti has the authority to recommend discipline for either the machine operators or the packer by referring any performance or behavior problems to the plant superintendent, Blankenship.¹³ According to Lampich, Richetti is supposed to make sure that employees perform at an acceptable level and if this does not happen, he is supposed to report it to the plant superintendent. Lampich testified that Richetti is expected to make a recommendations on what action should be taken involving any of the bag line employees who fall below this acceptable level. In Lampich's view, while there have been no performance issues as of yet, if the situation arises, Richetti's recommendation would carry a lot of weight since he is the one in charge of the bag line employees and knows the difference

through 7:45a.m; with a 10:00a.m lunch break. Edgar is usually last for both lunch and breaks. Edgar usually takes his first break at 7:45a.m. and his lunch break at 10:30a.m.

¹⁰ Lincoln Street, Inc., 292 NLRB 172 (1988) (The Employer's evidence regarding the lead bag adjustor's responsibility in monitoring breaks and lunches does not require the use of independent judgment sufficient to accord supervisory status).

¹¹ Chrome Deposit Corp., 323 NLRB 961 (1997) (Assignment of employees according to workflow does not establish supervisory status).

¹² The record reveals that the second shift machine adjustor has the same duties, except for training employees, and that the parties stipulated that he is not a supervisor and should be included in the unit.

¹³ Employer's witness, Lampich, claims that Richetti was given the authorization to remove any employee from the bag line operation when he was promoted a few years back.

between good and bad quality/output. Furthermore, Lampich speculated that if Richetti ever brought up a complaint against any other employee, there would be no need for an independent investigation since his word would be accepted.¹⁴ On cross-examination, Lampich recanted his previous statement and said that since some issues require an investigation, management does not always take Richetti's word.

In contrast, Richetti testified that he has never been told, either by Lampich or any other Employer representative, that he has the authority to remove or discipline any employee on the bag line, and that during the time that he has been the lead bag adjuster, he has never been consulted as to whether or not disciplinary action should be taken against an employee in his department.

To the contrary, since the time that he has been the lead bad adjustor, Richetti in fact made a recommendations to upper management, that they remove a certain employee, but his recommendation was never followed.¹⁵ Lampich confirmed that he and Fellows are in charge of determining whether an employee will be terminated or given a counseling session for an infraction and that they are the ones who deal with disciplinary action that might lead to discharge. Employee grievances are handled by the scheduler, the plant superintendent, shift supervisors, the human resources manager or Lampich.

Next, the Employer claims that Richetti was given the authority to make recommendations on disciplinary issues pertaining to the employees in the bag line department as well as take part in the hiring and promotion process of that department.

¹⁴ Lampich stated that an independent investigation would be conducted if any other employee from the bag line department brought up a complaint against another coworker. This also applies to Felipe, the employee who directs the occasional second shift in the bag line department.

¹⁵ The employee was Ruben Santana. He later retired.

Richetti's testimony directly contradicts Lampich's testimony, as Richetti submits that he was never informed that he had the authority to discipline or recommend disciplinary action against any employee.¹⁶ In fact, the record reveals that Richetti has recommended, since he was promoted to the lead bag adjustor position, to remove a particular employee from the department, and that his recommendation was not followed. In addition, contrary to Lampich's testimony that Richetti has the authority to effectively recommend the promotion or hiring of employees, the record disclosed that in a recent instance when an employee retired, Richetti was never given the opportunity to make any recommendations as to the replacement for the retired employee.

Furthermore, *Dixon Industries, Inc.*, 247 NLRB 185 (1980), relied on by the Employer, does not support its allegation that "employees with fewer responsibilities than Richetti have been held to be supervisors under the Act." In the case cited, the individuals at issue had more authority than Richetti and showed independent judgment when performing their duties. For instance, one individual had the authority to train, instruct, assign and reassign, and transfer employees to other jobs, as well as to inspect the work performed by each employee. He also gave verbal reprimands to an employee on a few occasions and he allowed an employee to leave work due to sickness. The other disputed employee in the Dixon case was put in charge of the assembly line and performed such functions as training employees in that department and assigning them particular tasks. He was also given authority to assign overtime hours or excuse someone from working overtime, and if any employee had any production problems, these would be brought to his attention. Clearly, based on the information above, there is no comparison between Richetti and these two employees, as Richetti does not possess the same authority, and

¹⁶ Lampich testified that he had informed Richetti, when he was promoted, that he had the authority to remove any employee from the bag line department.

has not exercised, any authority, to effectively recommend discipline, including terminations.

Thus, the Employer has failed to sustain its burden in this regard.

(3) "Power" to recommend employees for hiring and promotion purposes

Lampich testified that Richetti has the authority to reject any employee hired or promoted to the bag line operation, either as a machine operator or a packer, and that accordingly, Richetti effectively controls who works in his department. Lampich testified that if a position becomes available in the bag line department, management posts a plant-wide notice and tries to find an employee with the most seniority with prior bag line experience.¹⁷ The plant superintendent then goes through all the applications of those employees with bag line experience and picks the employee with the most seniority. If for some reason the employee cannot perform the duties of that department, Richetti would have the authority to remove that person. According to Lampich, Richetti has the authority to recommend whether or not an employee should get a "step increase" based on his work performance.

In contrast, Richetti testified that he does not participate in the interview process for new hires and that he was never informed that he had the authority to reject someone from the bag line or recommend that someone be hired to that department. Moreover, he testified that although he has never had the opportunity to remove anyone from the bag line operation, there was an opportunity in which the management could have consulted him about a promotion of one of the production employees. Richetti described that recently, a lady working in the bag line department retired and so the Employer began its search for a replacement. The Employer

¹⁷ A few years ago, the Employer decided to consolidate the production area and the bag line department into the same facility located at Vernon Way. Before the consolidation, the bag line department was located in another facility and it contained five bag machines. After the consolidation, the Employer sent three bag machines to

ultimately hired a production area employee who had the most bag line experience, but Richetti was never consulted.

The record discloses that the Employer does not provide any performance evaluations or reviews for any of its employees. Thus, Richetti is not called on to evaluate the performance of any other employee or to make performance-based recommendations. Based on the above, it is concluded that the Employer has failed to sustain its burden in this regard.

Secondary Indicia

Finally, the Employer makes the argument that secondary indicia should be considered when determining the supervisory status of Richetti. First, the Employer notes that Richetti is making \$5.00 per hour more than the average employee, which they claim is about 50 percent more than any other worker in that department.¹⁸

The record reflects, however, that Richetti only received a \$1.00 raise in connection to his promotion to the lead bag adjustor position. Thus, it is clear that Richetti was already being paid an hourly wage rate higher than the others in his area due to his seniority and experience, and that the increase attendant to his promotion was merely \$1 per hour. The only reason for the increase was due to the fact that he was the employee with the most experience and responsibilities in the department.¹⁹

Secondly, the Employer argues that if Richetti is determined not to be a supervisor, there would be only one supervisor for 70 employees on the first shift and this would

its Williamsburg, Pittsburgh facility and kept two for the Vernon Way facility. The Employer was thus left with no other alternative than to send some of the bag line employees to work on the production floor.

¹⁸ *Masterform Tool Company*, 327 NLRB 1071 (1999) (Although adjustors generally earn a higher wage than non-adjustor employees, absent any of the statutory 2(11) indicia, this fact would not transform the senior leads into statutory supervisors).

¹⁹ Before Richetti was promoted to lead bag adjustor, he was making four-dollars more than any other employee in his department.

be an unreasonable ratio.²⁰ See, *Poly-America, Inc. v. NLRB*, 260 F.3d 465, 479 (5th Cir. 2001); *Montech of Mississippi v. NLRB*, 876 F.2d 514, 517 (5th Cir. 1989).

The record reveals, however, that during the day shift while the bag operation is in progress, the plant manager, the scheduler, the human resources manager, and the plant superintendent, who are all undisputed supervisors, are on duty, overseeing the operation of the Employer's production.

Evidence of secondary indicia is not sufficient to establish supervisory status if the Employer fails to prove that Richetti possessed any one of the primary indicia defined in the Act. As is noted above, the Employer has failed to sustain its burden in this regard. The Board in *Ken-Crest Services, supra*, at slip. op. pg. 3, stated:

“secondary indicia of supervisory status, such as higher pay, the perception of others, the supervisor/employee ratio, and being highest-ranking employee on site, are not determinative here, since Employer failed to establish that program managers possess any one of the primary indicia of supervisory status; secondary indicia are insufficient by themselves to establish supervisory status.”

Conclusion Regarding Supervisory Status

Richetti was promoted about 3 years ago to lead bag adjustor. Once he was promoted, his title changed and he received a \$1.00 per hour raise, but his duties never changed. All three shift supervisors, Blankenship and Lampich, are salaried employees and are not entitled to overtime. Meanwhile, all the production employees, including Richetti, need to punch a time clock and are entitled to overtime. In addition, only the scheduler, the human resources manager, all three shift supervisors, the plant superintendent and Lampich attend the weekly management meetings. On occasion, the payroll and safety office clerical attends if there is a need to discuss safety and environmental issues, while Richetti has never attended these meetings.

²⁰ Juan Franco is the first shift supervisor on the production floor.

As noted above, the second shift supervisor in the bag operation is Felipe, who the parties stipulated is not a supervisor. Felipe's duties are strikingly similar to Richetti's, which include adjusting the machines, changing the rolls when they run out and relieving employees while they take their mid-shift breaks or lunch.

There is no direct evidence that Richetti has independent authority to transfer, suspend, layoff, recall, discharge, reward, or adjust employee grievances. As noted above, the Employer has failed to sustain its burden in support of the three indicia cited in support of its contention. Accordingly, based on the record as a whole, I conclude that the Employer has failed to meet its burden to establish that Richetti is a supervisor as defined by the Act, and I shall therefore include him in the appropriate unit. *Bakersfield Californian*, 316 NLRB 1211(1995).

UNIT ISSUES

A. BOARD STANDARDS

In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). A petitioner must demonstrate that the employees in the petitioned-for unit share a sufficient "community of interest" so as to constitute an appropriate bargaining unit. *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). To assess whether employees share such a community of interest, the Board weighs a variety of factors, including:

[S]imilarity in methods of work or compensation, similar hours of work, employment benefits, common supervision, similar qualifications, training and skills, similarity in job functions and the location where job duties are performed, the amount of interaction and contact with other employees, integration and interchange of work functions with other

employees and the history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

Under well-established Board law, office clerical employees and plant clerical employees may not constitute a single bargaining unit, absent the agreement of the parties. *Kroger Co.*, 204 NLRB 1055 (1973); *Fisher Controls Co.*, 192 NLRB 514, 515 (1971); *Weyerhaeuser Co.*, 173 NLRB 1170, 1171 (1968). This is due to the fact that normally a distinct difference exists between office clerical employees and plant clerical employees. See e.g., *Dunham's Athleisure Corp.*, 311 NLRB 175 (1993). The distinction is rooted in community of interest concepts. *Caesar's Tahoe*, 337 NLRB 170 (2002). The indispensable and conclusive element is that the asserted plant clericals perform functions closely allied to the production process or the daily operations of the production facilities at which they work. *Id.* Normally plant clericals spend most of their working time in the plant production area. The test generally is whether the employees' principal functions and duties relate to the production process, as distinguished from general office operations. *Id.*

B. **FACTS AND ANALYSIS REGARDING DISPUTED CLASSIFICATIONS**

1. **Production and Maintenance Employees**

The production and maintenance employees are included in the bargaining unit. They are considered non-exempt²¹ and are required to punch a time clock. All the employees²² receive the same vacation and health benefits. Employees making less than \$30,000 per year pay 15 percent of the health coverage premiums, those earning over \$30,000 per year, pay 20 percent of health coverage premiums.²³

²¹ "Non-exempt" refers to employees who are not exempted from the wage and hour laws. Thus, the overtime and minimum wage laws apply to them.

²² The phrase "all employees" encompasses the plant employees, customer service representative, payroll and safety employee, the production clerk and the receptionist.

²³ The Employer pays the first percentage (i.e. 80) while the employee pays the second number (i.e. 20).

The human resource manager is in charge of keeping all of the employee personnel records and deals with employee complaints such as supervisor harassment. Human Resource Manager Fellows is also responsible for making recommendations and evaluations of employees being considered for termination, but final approval from Lampich is required for any termination. The production and warehouse employees are provided uniforms, but their use is not required.

2. Production clerk/plant clerical

Gilla Gutierrez has been working as the production clerk/plant clerical at the Employer's Vernon Way facility for about 5 years. Before being promoted to this position, she worked on the production floor.²⁴ She reports to the scheduler, Sue Porath, and sits in one of the offices located on the production floor. Her normal work hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, and whenever she takes vacation, a forklift driver usually takes her place. She does not punch a time clock and is considered a non-exempt employee.²⁵ Although she can wear a uniform, she is not required. Gutierrez takes breaks and lunches with other production employees.²⁶

As production clerk, Gutierrez inputs into the Employer's computer system, information such as the number of rolls of raw material consumed during the previous 24 hours, so as to deduct the quantity from the raw material inventory. She also inputs the production of finished goods that took place during the previous 24 hours to the finished goods inventory. Furthermore, she inputs into the system any new material coming into the plant as well as

²⁴ Lampich testified that he prefers the production clerk have plant experience such as being familiar with the products and processes of the plant.

²⁵ The shipping clerk, Pete Thomas, punches a time clock.

²⁶ She has two sisters working in the plant with whom she takes some lunches and breaks.

deducts the corrugated and poly material consumed during the previous 24 hours. The information Gutierrez inputs into the system is used by the scheduler, Lampich and the purchasing person. The shipping clerk at the Marshall Avenue warehouse has similar inputting duties.

Based on the record, it is concluded that Gutierrez shares a sufficient community of interest to require her inclusion in the appropriate bargaining unit. In this regard, she works similar hours, receives the same employment benefits and has similar qualifications, training and skills as the production employees. While she does not have common supervision, as she reports directly to the scheduler, she works from 8:00 a.m. to 5:00 p.m. like most of the other plant employees and she receives the same vacation and health benefits. Moreover, she previously worked on the production floor and the skills obtained in that position helped her secure the job as the production clerk.

Additionally, it is noted that she has an office on the production floor, and she normally takes her lunch and mid-shift breaks with other production employees. When she goes on vacation, one of the forklift drivers, who is in the unit, takes her place. In this regard, it is noted that the record disclosed that the shipping clerk, who the parties stipulated should be in the bargaining unit, has basically the same duties as Gutierrez.

Based on the above, and the record as a whole, I conclude that Gutierrez shares a community of interest with the unit employees. I shall, therefore, include the production clerk/plant clerical, in the appropriate unit.

3. Payroll and Safety Office Clerical

Debbie Baudaur has been working for the Employer as a payroll and safety employee for about 6 or 7 years, and has been with the company for about 20 years. Prior to being promoted to this position, she worked on the production floor. Her hours of work are 8:00 a.m. to 5:00 p.m., Monday through Friday, and her lunch break is scheduled between noon and 1:00p.m.²⁷ She does not punch a time clock and does not have to wear a uniform. She is considered a non-exempt employee and is supervised by Fellows, the human resource person. While on vacation, no other employee takes her place since she takes care of payroll before she leaves.²⁸

Her duties include payroll, safety and environmental. As a safety employee, she is in charge of managing the annual program, which includes the safety training that the Employer is required to perform. She is also in charge of gathering the material and people needed so that the shift supervisor, an outside agent or herself can conduct the training. In addition, she orders all the safety equipment such as the first-aid supplies and the personal protective equipment. Finally, she makes sure that all employees have been trained on their specific work areas such as lockout tag or forklift operations. She interacts daily with production employees in her safety role.

As part of her environmental duties, she is in charge of keeping records of the hazardous waste materials disposed and makes sure they are properly labeled. She is also responsible for bringing a hazardous material person to the facility in order to dispose of the waste. This must be done within 90 days of generating the material. In her capacity as an environmental employee, she interacts with production employees at least weekly. She usually

²⁷ Lampich has never seen Baudaur take lunch with any production workers.

²⁸ She can only take one week off at a time.

interacts with employees at the printing press since they are the ones responsible for generating and labeling the hazardous material. Since she receives and maintains all the material safety data sheets for the materials brought into the plant, she may have contacts with employees who may be concerned about any material they are working with at the facility.

Finally, as the payroll clerk, she is in charge of pulling out the hours from the "Chronos" system in order to determine the pay record of each employee and produce the checks. As a payroll employee, Baudaur only interacts with production employees if they have any questions regarding their hours worked.

Based on the record as a whole, it is concluded that the payroll/safety office clerk does not share a sufficient community of interest with the unit, to require her inclusion in the appropriate unit. Although she has similar work hours, employment benefits and skills as the other plant employees²⁹, the similarities end here.

It is noted that she has a different supervisor, Fellows, and is not required to punch a time clock. Moreover, in contrast to Gutierrez' situation noted above, the record failed to establish that the payroll/safety clerk has regular interaction with the production employees or that there was any interchange of work functions. Baudaur was not presented to testify at the hearing and the only evidence presented was via Lampich's testimony. Even though Lampich claimed that Baudaur interacts daily with the production employees in her safety role and at least weekly in her environmental role, he never specified what type of interaction she has with them. Lampich was only able to speculate that she interacts with the employees at the printing press since they deal with hazardous materials and could possibly interact with any other employee if they had any concerns with the materials they were working with.

²⁹ Before being promoted to her payroll and safety position, she worked on the production floor.

Finally, the record discloses that a significant portion of Baudaur's job encompasses her duties as the payroll clerk.³⁰ She uses the Chronos system to determine the hours worked by all of the employees and produces the checks. Although the employees can interact with her if they ever have any questions concerning their hours, there was no evidence this ever occurred.

Based on the record as a whole, it is concluded that the payroll/safety clerk, Baudaur, does not share a significant community of interest with the unit employees to mandate her inclusion. I shall, therefore, exclude her from the appropriate unit.

4. Customer Service Representative

Becky Clark works as the customer service representative at the Employer's Marshall Avenue facility. Her primary duties include taking care of customer orders she receives over the computer, phone or via fax, and puts them in printed format so that the shipping department can use the information. Clark also forwards any customer concerns or complaints to the quality control manager. She is considered non-exempt and her hours of work are from 8:00 a.m. to 5:00 p.m., Monday through Friday. She does not wear a uniform and does not have to punch a time clock. She reports to a supervisor at the Employer's headquarters, located in the State of Vermont. Clark takes lunch and mid-shift breaks with other warehouse employees.

Clark interacts with several employees at the Vernon Way and Marshall Avenue facilities, such as the scheduler, quality control manager, forklift drivers, Lampich and probably some of the truck drivers. Occasionally, she goes to the Vernon Way facility to deliver mail,

³⁰ Westinghouse Electric Corp., 118 NLRB 1043 (1957) (a payroll employee is usually considered to be an office clerical employee and they are customarily excluded from the production and maintenance unit).

shipping reports or UPS/Fed-Ex mail that was delivered to the warehouse by mistake. She also visits the Vernon Way facility to pick up office supplies.

Based on the record presented, it is concluded that Clark does not have a sufficient community of interest with the production and maintenance employees to require her inclusion in the bargaining unit. Although she works similar hours and enjoys the same employment benefits as the other employees in the unit, she does not share common supervision³¹ and there is no integration or interchange of work functions with the unit employees.

Furthermore, she does not perform similar work duties as the production and maintenance employees and most of her duties are performed at the Marshall Avenue facility, whereas most of the employees in the unit work at the Vernon Way facility. Although, Lampich testified that Clark interacts with some of the forklift drivers and truck drivers, details concerning this matter were not presented so as to demonstrate anything other than minimal contact.

Based on the record as a whole, it is concluded that Becky Clark does not share a significant community of interest with the unit employees to require her inclusion in the unit, and accordingly, the customer service representative will be excluded from the appropriate bargaining unit.

5. Receptionist

Candy Soloranzo has been working as a receptionist for about 8-9 years. Before working in this position, she worked as a production employee. Her normal hours of work are from 8:00 a.m. to 5:00 p.m., Monday through Friday.³² Her supervisor is Chris Fellows, the

³¹ Her supervisor is in Vermont.

³² Soloranzo sometimes works on Saturdays but only when the Employer conducts inventories and not as a receptionist. Other employees who work during inventories include: office clerical, production employees, forklift drivers, Clark, Gutierrez, Baudaur, Lampich and other supervisors.

human resource manager. She is considered a non-exempt employee and is not required to punch a time clock. She does not wear a uniform. Her duties include receiving incoming calls and being in charge of handing out vouchers for the paper plate program.³³ She sits facing the front office entrance of the building, about 40 feet from the outside of the facility described earlier. Employees normally do not come through the front office entrance but rather enter through the back of the facility or the front plant entrance where time clocks are located.³⁴ Whenever Soloranzo goes on vacation, a front office, temporary or plant floor employee will take her place.

Based on the record presented, I conclude that Candy Soloranzo works as an office clerical and thus should not be included in the bargaining unit. The record reveals that while she works similar hours and receives the same benefits as the production and maintenance employees, she is supervised directly by Chris Fellows and she is not required to punch a time clock like the employees in the bargaining unit. Additionally, she has minimal interaction³⁵ and there is no interchange or integration of work functions with production or maintenance employees, as she works out of one of the Employer's front business offices. As the receptionist does not share a significant community of interest with the unit employees, and because I have conclude that the receptionist is an office clerical position, I shall, exclude her from the appropriate bargaining unit.

There are approximately 176 employees in the appropriate bargaining unit.

³³ The Employer has a program in which employees can buy paper plates at a discounted price.

³⁴ Employee may enter through the front office entrance if they need to speak to Fellows about any issues or Baudaur, concerning payroll questions or problems. They also come through the front door to pick up paper plate vouchers from Soloranzo.

³⁵ Lampich states that her only interaction with production employees is when they want to purchase paper plates at a discounted price.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Food and Commercial Workers Union Local 135, Affiliated with United Food and Commercial Workers International Union, AFL-CIO, CLC.**

LIST OF ELIGIBLE VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and the addresses that may be used to communicate with them.

Excelsior Underwear, Inc., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394

U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an alphabetized election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017-5449, on or before **August 1, 2003**. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to file the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **August 8, 2003**.

Dated at Los Angeles, California, this 25th day of July 2003.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director
National Labor Relations Board
Region 21

177-8500
177-8560-1000
177-8580-2600
440-1760-0580
440-1760-2960
440-1760-1940